

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

2002 MAR 11 PM 4:49

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Orean Dale Palmer
a/k/a Dale Palmer,
Mary Jane Palmer,

Debtors.

Case No. 94-76024-W

Adv. Pro. No. 01-80254-W

Chapter 13

Orean Dale Palmer,
Mary Jane Palmer,

Plaintiffs.

vs.

Associates,

Defendant.

JUDGMENT

ENTERED

MAR 13 2002

S. R. P.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Associates ("Defendant") shall deliver to Orean Dale Palmer and Mary Jane Palmer ("Debtors") or their attorney the duly satisfied mortgage and title to Debtors' mobile home with liens released within twenty days of the date of this Order. In addition, Debtors are entitled to \$5,000.00 in damages from Defendant.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
March 11, 2002.

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CERTIFICATE OF MAILING
The undersigned Clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

MAR 13 2002

~~DEBTOR'S DEBIT CARD ATTORNEY, TRUSTEE~~

SHER E R PHIPPS

Deputy Clerk

✓ Richardson
✓ Defendant

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ORDER

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S. R. P.

THIS MATTER comes before the Court upon Orean Dale Palmer and Mary Jane Palmer's ("Debtors") Complaint seeking a determination of civil contempt and recovery of damages attributable to a violation of the discharge injunction of 11 U.S.C. §524(a)¹ upon the grounds that Associates ("Defendant") improperly refused to provide Debtors with a satisfied mortgage and title to their mobile home with lien released after Debtors fully paid the underlying debt under the terms of their completed Chapter 13 plan. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157, 1334 and 11 U.S.C. §524. This is a core proceeding under 28 U.S.C. §157(b)(2)(O).

After receiving the testimony, considering the evidence, and weighing the credibility of the witness, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Fed.R.Civ.P. 52, made applicable in bankruptcy proceedings by Fed. R. Bankr. P. 7052.²

¹ Further references to the Bankruptcy Code, 11 U.S.C. § 101, *et. seq.*, shall be by section number only

² The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

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FINDINGS OF FACT

1. Debtors, the Plaintiffs in this adversary proceeding, filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code on December 7, 1994, C/A No. 94-76024.
2. Debtors successfully completed their case, and the Court granted a discharge on December 15, 1999. The case was closed by the same Order that granted the discharge.
3. Debtors proposed Plan, confirmed Plan, and Amended Plan all properly provided for the mortgage holder's (originally Fleet Finance) secured claim and lien. Indeed, Fleet Finance had sufficient notice of Debtors' bankruptcy case as it filed a Proof of Claim in the amount of \$17,074.25 on February 15, 1995.
4. On December 7, 1999, the Trustee filed a Final Report indicating that Debtors paid Defendant's, the new mortgage holder, claim in full.
5. Subsequent to discharge, Debtors requested Defendant to provide a duly satisfied mortgage and title to their mobile home with liens released.
6. During Mr. Palmer's attempts to obtain the satisfied mortgage and title to the mobile home with liens released, he spoke with a representative of Defendant by telephone, who advised him that there was still a balance of approximately \$8,000.00 owing on the account and that, regardless of the bankruptcy, Defendant would not satisfy the mortgage or release the title to the mobile home unless the balance was paid.
7. Following their unsuccessful attempts to clear the title to their land and mobile home, Debtors asked their attorney to contact Defendant on their behalf. Debtors' attorney made multiple attempts to resolve the matter informally by contacting Defendant and its local attorney.
8. Defendant's local attorney informed Debtors' attorney that he had advised his client to comply with Debtors' request and provide them with a satisfied mortgage and title to their mobile home with liens released, but Debtors did not receive the documents.
9. Debtors' real property was given to them by Mrs. Palmer's mother, who acquired it in the 1920s. The property has been in the family since the 1840s. Mrs. Palmer's mother was aware of the problems Debtors were having in obtaining the satisfied mortgage and was very upset by the situation. As a result, Debtors suffered emotional distress. Sadly, Mrs. Palmer's mother died

without knowing that the title to the family property was clear.

10. After exhausting informal efforts to obtain the satisfied mortgage and title to the mobile home, Debtors filed a motion to reopen their case and filed this adversary proceeding.

11. Defendant did not answer Debtors' Complaint and the Clerk of Court entered default against Defendant in this matter. On February 12, 2002, this Court held a hearing to determine damages. Neither Defendant nor its counsel appeared to contest the damages alleged.

CONCLUSIONS OF LAW

The discharge of a debt under the United States Bankruptcy Code operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor. See §524(a)(2). It is undisputed that the subject debt was discharged in the Chapter 13 bankruptcy, that Defendant knew of the discharge, and that it would violate §524(a)(2) for Defendant to require Debtors to repay the debt as a condition of receiving the duly satisfied mortgage and title to their mobile home with liens released. See Pope v. United Company Lending Corp. (In re Pope), C/A No. 93-71473-D, Adv. Pro. No. 97-80205-W slip op. 3 (Bankr. D. S.C. Dec. 15, 1997) (rejecting a creditor's argument that its lien survived because its claim was not paid in full under the Chapter 13 plan and reasoning that the creditor received the exact treatment that the plan provided for the creditor). Debtors were clearly entitled to the clear title to their land and mobile home upon successful completion of the confirmed Plan that provided for full payment of the debt to Defendant.³

The testimony and documentary evidence establish that Defendant was aware of the bankruptcy, had notice of the discharge, and was given numerous opportunities to provide Debtors with the satisfied mortgage and title to their mobile home. Despite the requests of

³ The facts of this case are similar to those in Pope, and, in Pope, the Court rejected several arguments the creditor raised to support the position that it was owed more money after the debtor paid the claim in full through the plan. As in Pope, the mortgage holder in this case received adequate notice of its treatment and did not object to it. Moreover, as previously noted, the Defendant received exactly what the Proof of Claim filed by the previous mortgage holder sought.

Debtors and their attorney, Defendant failed and refused to comply. As a result, Debtors have been damaged in that they have been deprived of clear title to their property for over two years and have suffered emotional distress within their family and extended family. Mrs. Palmer will have to live with the knowledge that her mother died still worrying about the status of the title to the family property. In addition, Debtors have been forced to incur attorney's fees for the prosecution of this action.

For all of the foregoing reasons, this Court finds Defendant in civil contempt for violation of the discharge injunction and concludes that Debtors are entitled to actual damages of \$2,000.00. The Court reaches this figure by adding the amount of emotional distress Debtors suffered (\$1,000.00) and reasonable attorney's fees Debtors incurred (\$1,000.00). In addition, the Court believes a punitive damages award is warranted in this case. Defendant blatantly ignored §524(a)(2), and, to deter Defendant from engaging in further erroneous conduct, the Court awards Debtor punitive damages of \$3,000.00. Further, it is clear that Defendant should be required to deliver to Debtors a duly satisfied mortgage and title to their mobile home with liens released within twenty days of the date of this Order. For the reasons stated within, it is therefore,

ORDERED, that Defendant shall deliver to Debtors or their attorney the duly satisfied mortgage and title to Debtors' mobile home with liens released within twenty days of the date of this Order;

IT IS FURTHER ORDERED, that judgment shall be entered in favor of Debtors in the amount of \$5,000.00.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
March 11, 2002.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

MAR 13 2002

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

SHEREE R PHIPPS

Deputy Clerk

✓ Richardson
✓ Dependent